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884. Where, however, strangers to the privileged occasion are present by the invitation or design of the defendant, the privilege is lost. *Fresh v. Cutter*, 73 Md. 87; *Dale v. Harris*, 109 Mass. 193. As this does not appear to have been the situation in the principal case, the decision is undoubtedly sound.

MARRIAGE.—BREACH OF PROMISE.—The action was brought to recover damages for a breach of promise to marry. After suit was commenced defendant died and the action was continued against the executor. As special damages plaintiff alleged and proved that she gave up her millinery business upon defendant's request and promise of marriage and support. *Held*, that action did not survive death of defendant. *Quirk v. Thomas*, [1915] 1 K. B. 798.

As a general rule a right of action for breach of contract survives death and is enforceable against the personal representative. *Hambly v. Trott*, 1 Cowp. 371. A breach of promise of marriage is an exception to this rule, because a breach of such a contract does not affect the estate of the parties but is essentially an injury to the feelings and sentiment. *Wade v. Kalbfleisch*, 58 N. Y. 282, *Grubb's Admr. v. Sult*, 32 Gratt. 203. There have, however, been numerous dicta holding that such an action could be maintained against a personal representative if special damage was alleged and pleaded. *Stebbins v. Palmer*, 1 Pick. 71; *Chase v. Fitz*, 132 Mass. 359; *Hovey v. Page*, 55 Me. 142; *Lattimore v. Simmons*, 13 Serg. & R. 183; *Finlay v. Chirney*, 20 Q. B. D. 484. In *Finlay v. Chirney*, LORD ESHER said that the damage to be considered must be damage affecting property and that if the plaintiff had agreed to give up a better place or employment and did give it up, it might be special damage. The court in the instant case considered the question still open and did not feel bound by anything said in the above cases as to whether or not proof of special damage would make a breach of promise maintainable against a personal representative; and it came to the conclusion that allegation and proof of special damage did not prevent the cause of action for breach of promise from dying with the promisor. "Now, inasmuch as there is no obligation affecting property on either side in a contract of marriage, I fail to see how the fact that one of the parties suffered pecuniary loss from the breach of the contract can impose a liability on the executor of the party who broke the contract."

MALICIOUS PROSECUTION.—LIABILITY FOR MALFEASANCE OF OFFICER.—Plaintiff, at the instigation of the defendant, was arrested wrongfully under a writ which commanded that he be brought before a justice of the peace. Instead, however, he was imprisoned for a period of about three days. *Held*, that even though such action under this writ was unlawful and unauthorized, plaintiff's imprisonment was a proper element of damage, since a person who sets on foot a malicious prosecution is liable for its continuance, and for the malfeasance of the officer making the arrest. *Lyons v. Davy-Pocahontas Coal Co.*, (W. Va. 1915), 84 S. E. 744.

The cases in America involving this question are far from being a unit upon the proposition as to how far the liability of one who starts a malicious

prosecution extends. Although the principal case cites several cases as sustaining their view of the question, and there are others which at first sight seemingly do so, upon closer inspection it will be found that most of them are distinguishable on one or more grounds. In *Williamson v. Glen Alum Coal Co.*, 72 W. Va. 288, relied on by the principal case, defendants were directly instrumental in procuring a warrant void on its face, because not issued for a criminal offence. Thus the wrongful act was directly within the control of the defendant. In other cases the subsequent act complained of was the natural, probable and lawful consequence, of the original unlawful act, unlike the principal case, where the subsequent act was unlawful. *Bacon v. Towne*, 4 Cush. 217; *Goodrich v. Warner*, 21 Conn. 431. Looking at the other side of the question, it would seem that in all cases in which, like the present case, the subsequent act was both unlawful and not within the control of the defendant, such act has been held not to be a proper element to be considered in assessing the damage due the plaintiff. *Frankfurter v. Bryan*, 12 Ill. App. 549; *Carter v. Sutherland*, 52 Mich. 597. It would seem to be doubtful, therefore, whether the decision in the principal case is sound, as neither class of cases in reality sustain the proposition contended for.

PARENT AND CHILD.—SEDUCTION.—Plaintiff brought this suit to recover damages for the seduction of her minor daughter. At the time when the seduction occurred, the plaintiff had been divorced from her husband, who was alive when this suit was brought. The divorce decree said nothing about the custody and support of the daughter. The father had contributed nothing to his daughter's support since the divorce, but the plaintiff has supported her and whatever money the daughter earned, she turned over to the plaintiff. Held, that the plaintiff could maintain the action. *Malone v. Topfer*, (Md. 1915), 93 Atl. 397.

A parent's action for the seduction of a minor daughter is founded upon the relation of master and servant, and, since the father, as a general rule, is the party who is entitled to the services of his minor daughter, he is, as a rule, the proper party to maintain such an action. *Martin v. Payne*, 9 Johns 387. But when the husband dies, his widow is entitled to the services of her minor daughter, and hence it is generally held that she can maintain an action for the seduction of her minor daughter. *Dedham v. Natick*, 16 Mass. 134; *Hammond v. Corbett*, 50 N. H. 501. But the question raised in the instant case, whether a divorced wife, the husband being still alive, can maintain a suit for the seduction of a minor daughter, the decree having been silent as to the daughter's custody and support, seems never to have been decided before. Since the action for seduction is founded upon the relation of master and servant, plaintiff was entitled to maintain the action if she was entitled to the daughter's services. In an action for seduction it is not necessary to prove that the minor daughter rendered actual services, it is sufficient to show that the parent had the right to demand such services. *Kennedy v. Shea*, 110 Mass. 147; *Simpson v. Grayson*, 54 Ark. 404; *Nichleson v. Stryker*, 10 Johns. 115. The father's right to the custody and services of a